

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

THOMAS WINTER and NBCUNIVERSAL  
MEDIA, LLC.

Plaintiff

v.

DEPARTMENT OF JUSTICE,

Defendant

**COMPLAINT FOR INJUNCTIVE  
RELIEF**

**INTRODUCTION**

1. Plaintiffs THOMAS WINTER and NBCUNIVERSAL MEDIA, LLC file this action under the Freedom of Information Act, 5 U.S.C. § 552, to compel Defendant DEPARTMENT OF JUSTICE to provide access to records of letters between Senator Roger Wicker and then-Attorney General Jeff Sessions dated 2017-2018, and records of electronic communications between Senator Roger Wicker and then-Attorney General Jeff Sessions concerning Dmytro Firtash dated 2017-2018.

**THE PARTIES**

2. Plaintiff THOMAS WINTER is a journalist who resides and works in New York, New York. WINTER has been employed by NBC News as a reporter in its Investigative Unit since August of 2013. WINTER submitted the FOIA request at issue in this action on September 24, 2018.

3. Plaintiff NBCUNIVERSAL MEDIA, LLC (“NBCUNIVERSAL”) is a media organization with its principal place of business in New York, New York. NBC News is a division of NBCUNIVERSAL. As WINTER’s employer, NBCUNIVERSAL shares a legal interest in his FOIA request and in any responsive records that are produced.

4. Defendant DOJ is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1).

### **JURISDICTION AND VENUE**

5. This court has subject matter jurisdiction over this action and personal jurisdiction over the defendant pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. §1331.

6. Plaintiffs have exhausted their administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i) because more than 20 days have passed since the DOJ received WINTER's FOIA request on or around September 24, 2018, yet the DOJ has failed to notify Plaintiffs of its determination as to whether to comply with the request, and its reasons therefor. *See* 5 U.S.C. § 552(a)(6)(A)(i). Accordingly, Plaintiff is entitled to appeal directly to the Court to enforce FOIA pursuant to 5 U.S.C. § 522(a)(4)(B).

7. The venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B) because WINTER resides and works, and NBCUNIVERSAL has its principal place of business, within this District.

### **STATEMENT OF FACTS**

#### **Background**

8. Dmytro Firtash (also known as Dmitry Firtash) is a Ukrainian businessman. United States government officials have characterized Firtash as an upper-echelon associate of Russian organized crime. On information and belief, Firtash built his wealth largely in the natural gas industry and had close relationships with high-ranking individuals in the administration of former Ukrainian President Viktor Yanukovych.

9. On June 20, 2013 a federal grand jury in Chicago returned an indictment under seal charging Firtash and five associates with felonies including racketeering, money laundering and a

related conspiracy charge. The charges stem from an alleged \$18.5 million conspiracy to bribe Indian officials for titanium mining licenses. These charges were unsealed on April 2, 2014.

10. On information and belief, Firtash was taken into custody in Austria by Austrian officials on March 12, 2014 at the request of the United States. He was released from custody on March 21, 2014 after posting an approximately \$174,000,000 (one hundred seventy-four million dollars) bond reportedly funded by Russian Billionaire Vasily Anisimov. This is the largest bail in Austrian history. Under his bail terms Firtash must remain in Austria.

11. On information and belief, on or about April 1, 2014, the U.S. Department of State requested that Austria extradite Firtash to the United States. In April 2015, a regional criminal court in Vienna denied the United States' extradition request. In February 2017, after Austrian prosecutors appealed this decision, an appellate court reversed and ordered Firtash's extradition. Firtash's appeal challenging his extradition is now pending before the Austrian Supreme Court. If the Austrian Supreme Court rules against Firtash and orders his extradition, the extradition will go to Austria's Justice Minister for final approval.

12. On information and belief, Firtash engaged a registered lobbyist, Lanny Davis and his firm Davis, Goldberg & Galper PLLC, in the United States to help him avoid extradition. According to filings by Davis under the Foreign Agents Registration Act (FARA), his firm has been paid at least \$325,000 for their services to Firtash since they were retained in fall 2016.

13. On information and belief, Senator Roger Wicker of Mississippi wrote at least one letter in 2017 or 2018 to then-Attorney General Jeff Sessions urging him to expedite the extradition of Firtash to the United States.

14. During the 115<sup>th</sup> Congress, Senator Wicker was the Chairman of the Commission on Security and Cooperation in Europe (also known as the Helsinki Commission). He also sits on

the Committee on Armed Services, Committee on Commerce, Science and Transportation, Committee on Environment and Public Works, and Committee on Rules.

15. Jeff Sessions was the Attorney General of the United States from February 9, 2017 until November 7, 2018.

16. In the course of his employment with Plaintiff NBCUNIVERSAL, Plaintiff WINTER submitted a FOIA request (DOJ-2018-008546) seeking records of letters between Senator Wicker and then-Attorney General Sessions dated 2017-2018, and records of electronic communications between Senator Wicker and then-Attorney General Sessions concerning Dmytro Firtash's extradition dated 2017-2018. (Request DOJ-2018-008546 attached as Exhibit A.)

17. The requested communications between Wicker and then-Attorney General Sessions pertain to Congress's exercise of its government oversight authority over the DOJ's handling of the extradition of Firtash. With the Austrian Supreme Court likely to decide Firtash's appeal of his extradition imminently, Plaintiffs seek to report timely to the public about the DOJ's actions regarding Firtash's extradition, Congress's exercise of its oversight, and any effect that Firtash's efforts to lobby the U.S. government have had on efforts to extradite him. Plaintiffs expect the requested communications to be central to their reporting.

**Plaintiff's FOIA Request**

18. On September 24, 2018, WINTER submitted FOIA request DOJ-2018-008546 to the DOJ seeking records of letters between Senator Roger Wicker and then Attorney General Jeff Sessions dated 2017-2018, and records of electronic communications between the Senator and then Attorney General dated 2017-2018 discussing Dmytro Firtash. WINTER also asked for expedited processing of his request. A true and correct copy of the September 24, 2018 request is attached as Exhibit A.

19. On October 23, 2018, WINTER received an email from the DOJ denying his request for expedited processing of his request. The email did not notify WINTER of the DOJ's determination on the merits of his request, provide any update on the determination, nor claim unusual circumstances. A true and correct copy of the October 23, 2018 denial is attached as Exhibit B.

20. On December 10, 2018, WINTER timely appealed the denial of expedited processing of the requested materials to the DOJ's Office of Information Policy. A true and correct copy of this December 10, 2018 appeal is attached as Exhibit C.

21. On December 13, 2018, WINTER received a letter via email from the DOJ denying his appeal of the denial of expedited processing of the requested material. The letter did not notify WINTER of the DOJ's determination on the merits of his request, provide any update on their determination, nor claim unusual circumstances. A true and correct copy of the December 13, 2018 denial is attached as Exhibit D.

22. As of January 29, 2019, updates on FOIA request DOJ-2018-008546 on FOIAonline.gov still show that the DOJ's estimated date of completion of WINTER's FOIA request is October 23, 2018 – a date that passed months ago without the DOJ complying with the FOIA request or making any substantive response to Plaintiffs about the merits of the request. (Screenshot attached as Exhibit A.)

23. More than twenty days have passed since WINTER submitted his September 24, 2018, FOIA request to the DOJ. WINTER has received no notice of any DOJ determination as to whether the DOJ will comply with the request. Plaintiffs WINTER and NBCUNIVERSAL have therefore constructively exhausted their administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

**COUNT I – DOJ’S VIOLATION OF FOIA**

24. Plaintiffs repeat, reallege, and incorporate the allegations in paragraphs 1-23.

25. WINTER made a valid FOIA request to the DOJ.

26. NBCUNIVERSAL MEDIA also has a legal interest in the request.

27. Under 5 U.S.C. 552(a)(6)(A), DOJ was required to provide notification of its decision to comply with WINTER’s request or issue a denial within 20 business days of receiving the request.

28. DOJ’s failure to comply with WINTER’s FOIA request or issue a denial within 20 business days violates FOIA’s statutory deadline and the DOJ’s own regulations promulgated thereunder. *See* 5 U.S.C. 552(a)(6)(A); 28 C.F.R. 16.5.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs respectfully ask this Court to:

- a. Order Defendants to conduct an adequate search for records and produce all responsive non-exempt records;
- b. Award Plaintiffs the costs of this proceeding, including reasonable attorney’s fees as expressly permitted by FOIA; and
- c. Grant such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Erik Bierbauer

Attorney for Plaintiffs

Erik Bierbauer (EB-0606)  
Law Department  
NBCUNIVERSAL MEDIA, LLC  
30 Rockefeller Plaza, Rm 620-540  
New York, NY 10112  
Tel: (212) 664- 4167  
*E-Mail: Erik.Bierbauer@nbcuni.com*